13 Legal and Religious Pluralism in Nigeria

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Introduction

Nigeria is quite a young state whose current configuration results from late nineteenth-century British colonial policies. Different colonies were unified in 1900 under the direct administration of the British Government, and the northern territories – formerly part of the Sokoto Caliphate – were merged with the Animist and Christian south. The British widely applied their policy of *divide et impera* (divide and rule), favouring some groups (especially the Hausa-Fulani) over others. As a result, in 1960, when Nigeria became independent, there was a complete lack of a common vision for the state's future, with outcomes that can still be observed today.

The 1963 Constitution eliminated any constitutional ties with Britain. In the following years, Nigeria reorganized its internal structure several times: currently the country consists of 36 states plus a Federal Territory of the capital Abuja, each having its own legislature and judiciary. In the 12 states in the north, once part of the Northern Region, Muslims form the majority of the population.

There are no recent official statistical data for Nigeria because of the desire to avoid exacerbating interethnic clashes on the basis of demographic data. Statistical projections made by various research bodies estimate the current population at more than 215 million people. Of these, two percent profess animist religions, while the remainder is equally divided between Muslims and Christians. The vast majority of the Muslims belong to the Maliki school (Peters 2006, 221; Peters 2005, 169; Mustapha-Bunza 2017), with a small Shiite minority present in Kano and Sokoto thanks to the proselytizing activities carried out by a Shia theologian, Ibraheem Zakzaky (b. 1953). Among the Christians, 74 percent are Protestant and 25 percent Catholic, while the rest belongs to other denominations. In addition to the religious component, the ethnic composition of the country is also relevant because around 250 ethnic groups coexist in Nigeria, although the vast majority of the population can be ascribed to fewer than 10: Hausa-Fulani, Yoruba, Ibo, Kanuru, Tiv, Edo, Nupe, Tbibio, and Ijav, speaking more than 400 different languages (Blench 2020; Siollun and Looney 2021). Hausa-Fulani, Kanuru, and Nupe

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are mainly Muslims; Ibo, Tiv, Edo, and Ijav are mainly Christians; and among the Yoruba, both monotheistic religions are well represented.

The Situation in the Country

Historical Foundations of Religious and Legal Pluralism

Nigeria's legal and religious pluralism is the result of its complicated history. Islam spread to western Africa through the activities of Muslim merchants, scholars, and settlers. Muslim communities arose within small regional states and societies without state institutions, linked together by trade routes, family ties, and religion. The Malian Songhay Empire (fifteenth century) and the Kanem-Borno Empire (eighth to nineteenth centuries) are particularly significant examples of political Islam in western Africa. In the land of the Hausa, in present-day northern Nigeria, where the progressive conversion of local communities to Islam obeyed the same dynamics seen in other parts of western Africa, sovereignty was sometimes acquired by a person who combined the characteristics of a chief and a priest and who could, if necessary, turn to one of the universalist religions (e.g., Islam) to strengthen his legitimacy; in other cases, the power of the Muslim merchant elites gave rise to monarchical forms of government. Katsina is a good example. From the sixteenth century, the kingdom of Katsina formally adhered to Islam and its rulers invited scholars from Egypt and the Maghreb to settle permanently in the region. However, the Hausa world always remained divided into an urban society, linked to court life, cosmopolitan, and Muslim; and a rural environment where, despite the significant affirmation of Islam, local customs and animistic beliefs survived. City-states arose, often rivalling each other, and from the fifteenth century, the age of the consolidation of Hausa Islam, until the eighteenth century, there were frequent conflicts which resulted in the area's economic and political impoverishment. In the nineteenth century, Othman Dan Fodio (1754–1817) initiated a *jihad* aimed at the assertion of Islamic values in a context where local customs and government practice left ample room for the corruption of moral mores. Dan Fodio was a member of the Fulani (Muslim and urbanized ethnic groups under Hausa control), an Islamic scholar, and an unyielding critic of the Hausa regime's corruption. His appeal to Islamic values of justice and morality ended in 1804 with a conflict against the Gobir authorities that led, a few years later, to the establishment of the so-called Sokoto Caliphate (1809–1903), which included almost all the Hausa lands. The government model was a hybrid born from the combination of an Islamic state with a variant of a Hausa monarchy (Lapidus 2000, 291). Muslim judges (*qadis*), inspectors (*muhtasib*) and imams were appointed, numerous *madrasa*s and mosques were built; the teaching of law, theology, and astronomy in the Hausa language was strengthened; and Kano became a famous centre for the study of Maliki law. The extension of the Caliphate's territory (at its peak it was the largest kingdom in Africa) suggested its subdivision into emirates. The

structure of the emirates was feudal and soon, especially in the more peripheral areas of the Caliphate, old power management habits re-emerged, with a consequent distancing from the ideal Islamic model pursued by Dan Fodio. English colonialism took advantage of this instability and, together with the political reorganization of the region, it also functioned as a vehicle for the affirmation of Christianity.

Christianity had already arrived in Nigeria in the fifteenth century, when the Catholic Portuguese reached the Kingdom of Benin's shores for the first time; they were merchants accompanied by Augustinian and Capuchin friars. The intense slavery activity of the Portuguese long discouraged the spread of Christianity, identified as the driving force behind slavery. It is therefore paradoxical that, in the nineteenth century, former slaves who had converted to Christianity brought this religion to present-day western Nigeria, where it took root. Samuel Ajayi Crowther (d. 1891), a former Yoruba slave who became the first African to be ordained a bishop by the Christian Missionary Society, contributed to translating the Bible into the Yoruba and Nubian languages. From the mid-nineteenth century, the Anglican missions, supported by the colonial government, began to grow in number, proclaiming the Gospel at the same time as building schools, dispensaries that were later transformed into hospitals and orphanages. However, the late establishment of Christianity in Nigeria explains the irrelevance of canon law, relegated to the rank of customary law and not yet able to compete with sharia as the confessional law of part of the population.

On the contrary, the role of "antagonist" to Islamic law belongs to customary law, whose definition has been clarified by the Supreme Court in *Nwaigwe & Ors v. Okere & Anor* ((2008) LPELR-2095 (SC)):

> Customary law generally means relating to custom or usage of a given community. Customary law emerges from the traditional usage and practice of a people in a given community, which, by common adoption and acquiescence on their part, and by long and unvarying habit, has acquired, to some extent, an element of compulsion, and force of law with reference to the community. And because of the element of compulsion which it has acquired over the years by constant, consistent and community usage, it attracts sanctions of different kinds and is enforceable. Putting it in a more simplistic form, the customs, rules, traditions, ethos and cultures which govern the relationship of members of a community are generally regarded as the customary law of the people.

In Nigeria, the existing plurality of customary laws reflects the country's ethnic richness.

Constitutional Norms Relating to Personal Status Law and Equality

The 1999 Constitution does not say much about personal status and family law: the only direct reference to the family is in Section 15(3) Const.,

according to which: "For the purpose of promoting national integration, it shall be the duty of the State to: . . . (C) encourage intermarriage among persons from different places of origin, or of different religious, ethnic or linguistic associations or ties"; however, the concrete meaning of this duty is not clear (Nweke 2019; Chukwu 2021). Section 4 (2) Const. states that "the National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution"; Item 61 of this List confers upon the National Assembly the power to make laws on "the formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes relating thereto." Thus, state and federal legislative competence over personal status can be considered residual; at the same time, the Federation and the states have no duty to codify Islamic or customary law.

The Constitution lays down the principle of religious freedom and the principle of non-discrimination. Under Section 38 (1) Const.,

> Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

Ruling on recourse proposed by Christians who felt they were being discriminated against because Christian marriage has no legal value if not celebrated in accordance with certain provisions of the Marriage Act, the Court of Appeal has clarified that the right to freedom of religion as established in Section 38 cannot be considered as inclusive of the right to a particular marriage or a particular procedure for marriage or its dissolution, affirming that "what form of marriage a couple wishes to undergo is certainly not a fundamental right under Section 38(1) or at all" (*Agbakoba v. A-G, Federation & Anor* (2021) LPELR-55906 (CA)).

Section 42 Const. sets the principle of non-discrimination:

> (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person: (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which Nigerian citizens of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

This article of the Constitution has been discussed in several cases related to inheritance rules. Interestingly enough, none of the cases I was able to trace relates to the discriminatory hereditary rules of Islamic law, but only those of various customary laws (Diala 2014). In *Chiduluo & Ors v. Attansey & Anor* ((2019) LPELR-48243 (CA)) the Court of Appeal held that "any law" that seeks to establish that children born out of wedlock are deprived from sharing the estate of the deceased father "is in violent conflict with Section 42 (2) of the Constitution (No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth)," also quoting the Supreme Court (*Ukeje & Anor v. Ukeje* 2014) LPELR-22724 (SC)) that declared unconstitutional the Igbo native law and custom in the part excluding from succession children born out of wedlock. In *Balanko & Ors v. Balanko* ((2021) LPELR-53459 (CA)) the Court of Appeal states that "any culture that disinherits a female child from her father's estate has been declared as void and in breach of Section 42 (1) and (2) of the Constitution" also referring to the Supreme Court (*Onyibor Anekwe & Anor v. Mrs Maria Nweke* (2014) LPELR-22697 (SC) and *Ukeje v. Ukeje*). In theory the expressions "any law" and "any culture" should also refer to those parts of Islamic law that are discriminatory. In fact, the right to inherit under Islamic law is based on three factors: blood relationship (*nasab*), relationship through marriage (*nikah*), and – in the past – patronage (*wala'*) between a master and their freed slave. A prospective heir can be excluded from inheritance if he or she is an illegitimate child or is of a different religion to the deceased, since a non-Muslim cannot inherit from a Muslim and vice versa (Cilardo 1993, 1994; Ismael and Oba 2019, 12, 2017, 72). Nonetheless, the higher courts are silent on these issues. A possible explanation for the lack of explicit significant judgments on discriminatory Islamic inheritance rules can be found in *Giwa-Osagie v. Giwa-Osagie & Anor* ((2009) LPELR-4533(CA)):

> there in fact exists a legal dichotomy between native law and Islamic law which has now been recognized by the 1999 Constitution. The 1999 Constitution established three distinct legal systems operating concurrently in Nigeria, the English common law and statutes enacted by various legislative houses at various tiers of government, the native law and custom of the people (as long as it meets and satisfies the repugnancy test) and Islamic law which by its very nature is an absolute law and which I don't think can be subject to the repugnancy test.

The "absolute" nature of Islamic law has been repeatedly affirmed by the jurisprudence: in *Alkamawa v. Bello & Anor* ((1998) LPELR-424 (SC)), the Supreme Court stated that "Islamic law is not the same as customary law as it does not belong to any particular tribe. It is a complete system of universal law, more certain and permanent and more universal than the English common law."

Nigeria is also a signatory to some important international conventions such as the 1979 CEDAW and its Optional Protocol of 1999 (respectively ratified in 1985 and 2004), the 1989 Convention on the Rights of the Child (ratified in 1991), and the 1966 ICCPR and ICESCR (ratified in 1993); Nigeria has made no reservations to any of these international conventions. Nonetheless, a number of Islamic and customary rules threaten the principles affirmed in the conventions: limitation on the free choice of a husband based on his religion, polygyny, unilateral dissolution of marriage, different shares of inheritance on the basis of sex are only some examples of rules that infringe the international standards on equality and non-discrimination.

Personal Status Laws

In Nigeria, as a consequence of ethnic and religious pluralism, several personal status laws coexist. Islamic law is a written, doctrinal law (*juristenrecht*); in Nigeria the dominant school of law, as also recognized by the Supreme Court (*Alkamawa v. Bello & Anor* (1998) LPELR-424 (SC)), is the Maliki *madhhab*. Islamic family law is not codified, even in the northern states.[1] In Kano state, an Islamic Family Law bill was drafted in 2017 but has not yet been converted into law. Scholars denounce the lack of uniformity in the decisions adopted by the different states' sharia courts and call for the institution of a Federal Sharia Court of Appeal to hear appeals from the state sharia appeal courts, a task currently fulfilled by the Court of Appeal, whose expertise in the field of Islamic law is considered insufficient (Ismael and Oba 2019; Oba 2004a, 2004b).

Customary laws in Nigeria regulate marriage, divorce, and inheritance (Chinwuba 2022; Udugbor 2012; Diala 2014), and since they are usually unwritten, their ascertainment is a problem for the judiciary[2] (Chinwuba 2022, 62). Under Section 16 of the 2011 Evidence Act, customary law must be established in either of two ways, namely by the court taking judicial notice of its existence or by leading evidence in the particular case. For the Court of Appeal, there is no doubt that Sections 17 and 18 of the Evidence Act, 2011 provide that native law and custom are a matter of fact which must be pleaded and proved by evidence except and unless they have been applied by the courts to the extent of acquiring such notoriety that it can be judicially noticed (*Ugbene v. Ugbene & Ors* (2016) LPELR-42110 (CA)). The burden of proving a custom shall lie upon the person alleging its existence (Sect. 16

1 On the contrary, Islamic criminal law has been codified by 12 states (Peters 2003, 2005, 2006). Therefore, some scholars disagree with the commonly held notion of Nigeria as a secular state, due to the indisputable relevance attributed to Islamic law in some parts of the country (Nwauche 2008; Oraegbunam 2015).

2 "Customary law is largely unwritten. When it is unwritten, it is provable by oral evidence of witnesses versed in the customary law"; *Agbakoba v. A-G, Federation & Anor* (2021) LPELR-55906 (CA).

(2) Evidence Act 2011), for example by calling witnesses who have personal knowledge of the particular custom.[3]

The position of Christian law in Nigeria is ambiguous. Firstly, unlike Islamic law which has been applied for centuries at least in the north of the country, there is no established tradition in the application of the rules of Christian law as the religious personal law of part of the population. Secondly, as a general rule, Christian marriage is listed under customary law and if a person "has secular or temporal as distinct from spiritual dispute with the spouse, he/she can approach the customary or area court, as the case may be, for its resolution" (*Agbakoba v. A-G, Federation & Anor* (2021) LPELR-55906 (CA)). The Court of Appeal clarifies in this judgment that if a Catholic couple decides to opt for a marriage in the Catholic Church, under canon law[4] and without compliance with the Marriage Act, that marriage will be recognized as a valid marriage within the Catholic Church, but it will not be recognized as a statutory marriage.

It is also possible to celebrate the so-called church marriage recognized under Sections 21–29 of the Marriage Act; this marriage is celebrated in any licensed place of worship by a "recognized minister of the Church, denomination or body to which the place of worship belongs, and according to the rites or usages observed by that church, denomination or body," provided that the formal rules and impediment laid down by the Marriage Act are observed by the parties (Sect. 21 Marriage Act). But, as to the legal status of this marriage, the Court of Appeal has explained that

> a good deal has been said about "Church marriage" or "marriage under Roman Catholic Law". So far as the law of Nigeria is concerned, there is only one form of monogamous marriage, and that is a marriage under the Ordinance. Legally a marriage in a church (of any denomination) is either a marriage under the ordinance or is nothing.
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> (*Motoh v. Motoh* (2010) LPELR-8643 (CA))

The statutory marriage – also known as monogamous marriage in contrast with Islamic and customary marriages that can be, and often are, polygamous – is regulated by the Marriage Act, first enacted in 1914 as a Marriage Ordinance. In the following years, the Act underwent minor amendments, but the law is still in force and regulates the celebration of civil marriages in

3 When the applicable customary law is that which prevails within the jurisdiction of the area and customary court, there is no need to prove it, since it is required for a person to sit as a judge in these courts to be versed in the customary laws and usages prevailing in the area of jurisdiction (see, for example, Sect. 6(b) of the Customary Courts Edict, 1984 and Order X Rule 6(3) of the Bendel state Customary Court Rules, 1978 applicable to Edo and Delta states).

4 From the ruling, nothing can be deduced but the couple being Catholic, nor is it specified under which canon law the marriage was celebrated (for example, 1983 *Codex Iuris Canonici* for the Catholic Church or the Canon of the Church of Nigeria (Anglican Communion), Ezeanokwasa 2019).

Nigeria. The Act determines the conditions for the validity of the marriage, regulating consent, registration, and causes of invalidity. However, it does not regulate personal and property relationships between spouses, dissolution of the marriage, the status of children, and successions, which are left to other statutory laws. Nigerian statutory laws in the field of personal status include both federal and state laws, such as the Matrimonial Causes Act 1970 (now Ch. M7 LFN[5] 2004), Matrimonial Causes Rules 1983, and Same Sex Marriage (Prohibition) Act, 2014. The territorial validity of a law depends on its subject: a good example is the Child's Right Act 2003. Since the subject of children is not listed either in the Exclusive Legislative or Concurrent List of competence of the National Assembly (federal) or of the Houses of Assembly (state), it must be considered as residual. As a result, the Child's Right Act 2003 enacted by the National Assembly is directly applicable only in the Federal Capital Territory of Abuja,[6] while the states can enact it as a state law or apply it by reference (Chinwuba 2022, 49).

English law is still partially applicable as "English laws extending to Nigeria" which remain in force if they were enacted before October 1, 1960, and as far as they have not been repealed through local legislation since 1960; and, also, as "received English law," i.e. laws that were applicable in England and have been adopted in Nigeria through local legislation during the colonial period. The last reception clause was dated January 1, 1900, and established that all laws and statutes enforced in England at that date, not being inconsistent with any ordinance in force in the colony, should be deemed and taken to be in force in the colony. The received English law includes the common law of England, the doctrine of equity and statutes of general application in force in England on January 1, 1900; good examples of received statute are the Wills Act 1837[7] and the Married Women's Property Act (MWPA) 1882 that "shall be in force so far only as the limits of the local jurisdiction and local circumstances shall permit and subject to any Federal law" (Sect. 32 Interpretation Act, Cap 192 LFN 1990). Nigerian courts consider English decisions and doctrines of equity not binding, but only persuasive.

Different laws can regulate the same situation differently. For instance, under Section 11 (1) (b) of the Marriage Act, each of the parties to the intended marriage (not being a widower or widow) must be at least 21 years

5 Laws of the Federation of Nigeria (LFN) is an alphabetical compilation of laws operative in Nigeria that is regularly updated; the current compilation dates from 2004. This is the reason why the same law can be cited by doctrine and jurisprudence in different manners (Ogbu 2007, 79).

6 The Federal Capital Territory (FCT) of Abuja is not a state *sensu stricto*; it is directly administered by a minister appointed by the President of the Federation (Sect. 297–304 Const.) and all the laws enacted by the National Assembly are applicable there.

7 The competence to legislate on succession is considered by the apex court as inhering to the state's House of Assembly. Therefore, each state can choose between enacting its own rules or applying existing laws, such as the Wills Act, 1837 (Chinwuba 2022, 393, 421; Diala 2014).

old and if she or he is under that age a written consent to the marriage must be received from the father, mother, or guardian. By Section 21 of the Child's Right Act, 2003 a person under 18 years is incapable of contracting a valid marriage. Under Islamic law and customary law, however, there is no minimum matrimonial age.

Personal Status Law and Interfaith Marriages

Since different systems of personal status law coexist (statutory, Islamic, customary), how can the law applicable to a person be determined? Scholars agree that an individual is subject to the system of customary law of the group to which they belong by birth. Since Nigeria is "a patrilineal society" (*Oduche v. Oduche* (2005) LPELR-5976 (CA)), filiation in customary law is usually traced to the father when the child is born in marriage. Customary law imposed at birth governs an individual's personal life, unless the child is disowned by the father or ostracized from the group (Omidire 1990). The mere fact of settling in a different part of Nigeria does not mean – per se – that the person will lose the right to follow their customary law and be obliged to have their affairs governed by the law of the place where they now live.

It is a well-known rule of Islamic law that anyone born to a Muslim father will be considered a Muslim: this rule is also followed by Nigerian Muslims who, therefore, have a double identity: one as a Muslim and one as a member of a certain ethnic group that could have its own customs. In the northern states, the Islamic identity tends to prevail; while in other parts of Nigeria, it is not rare to see ethnic customs take priority over religious identity, for example in the field of succession among those groups whose religious affiliation is not homogeneous, such as the Yoruba (Chinwuba 2022, 385).

It is possible for a person to voluntarily choose a different customary law to regulate their personal affairs: in *Olowu & Ors v. Olowu & Anor* ((1985) LPELR-2604 (SC)), the Supreme Court introduced the concept of "culturalization" to describe a change of status under customary law, when a person becomes a member of a community to which they were a stranger, through a process of assimilation or acculturation.

A couple ready to marry may decide what type of union they desire. The chosen law will determine the competence of the court (statutory, customary, Islamic) and will also govern issues of divorce or inheritance (*Cole v. Cole* (1898) NLR 15; *Agbakoba v. A-G, Federation & Anor* (2021) LPELR-55906 (CA)). For instance, when someone contracts a marriage under the Marriage Act and then dies, "the deceased is deemed to have intended the succession to his estate under the English law and not under customary law" *Nebuwa v. Nnenna* (2018) LPELR 45097 (CA).

I have not been able to find reliable statistics on the incidence of interfaith marriages in Nigerian society. Nigeria is currently plagued by interethnic conflicts, terrorism, and separatism, and mutual distrust between groups and religions does not encourage the fulfilment of national integration as required by

the Constitution. Research demonstrates that Muslim-Christian marriages are not frequent, and when they occur, they face hostility from families and tribes. Some scholars have studied specific contexts or groups: Nolte has observed the Yoruba in southwest Nigeria, emphasizing that what she calls "Yorubaness" – together with other forms of communal identity – prevails over religious affiliation, thus allowing a certain frequency of marriages between Muslim men and Christian women (Nolte 2020; Nolte et al. 2018). Goodluck and Ngozi (2023) describe interfaith marriages as a means of contestation in religious societies, referring to the blame put in the northern region on Muslim girls who decide to marry non-Muslim men and in the eastern region on Christians who enter into interfaith marriages. Muslim scholars generally oppose Muslim girls marrying non-Muslim men (Iman 2016), but the prospective spouses can choose to marry under the Marriage Act, which does not list difference of religion among the impediments to matrimony.

Conflicts of personal status laws addressed by courts mainly concern inheritance. In the conflict between different customary laws, the tendency – at least regarding personal property – is to apply the law applicable to the deceased, while succession to real or immovable property is governed by the *lex situs* (Ogbu 2007, 318–320). When the deceased is a Muslim, their succession is usually governed by Islamic law; nonetheless, in case of possible conflict with other laws (customary or statutory, chosen by the deceased to govern some aspects of their life), Islamic law would apply only if the parties regarded themselves as subject to it and acted accordingly (*Mariyama v. Sadiku Ejo* (1961) NRNLR 81). In *Giwa-Osagie v. Giwa-Osagie and Anor* (2009) LPELR-4533 (CA), the Court of Appeal affirmed:

> We are bound to consider the manner of life of the deceased. This approach was used in determining whether Islamic law or English law was applicable in *Asiata v. Goncallo* (1900) 1 NLR 41. The court was concerned about whether or not the deceased had been a "bona fide follower of the Prophet" and whether he and his wife had "lived and died as Mohammedans" . . . The attitude of the courts had been to presume to judge the extent of the commitment of the deceased to his faith, and to determine his personal law by the quantum or extent of evidence brought in proof of same. We are bound by the yardstick imposed by previous authorities on this point.

Judicial System

As a Federation, Nigeria has a multilevel judiciary system that has undergone several reforms over the course of time. Its structure is rather complex and reflects both the colonial legacy and the multiple articulations of the Nigerian state following independence. At the state level, there are the so-called area/sharia courts (in the north) and customary courts (in the south). Area courts were created by the Area Court Edicts 1968, one for each of the six northern states in

existence at the time (Obilade 1969). Since 2000, following the reintroduction of Islamic criminal law and the need to reorganize the judiciary, in most of the northern states area courts have been replaced by the new sharia courts (Lawan 2014). Sharia courts are entitled to exercise jurisdiction and power over all persons professing Islam and any other person who does not profess the Islamic faith but who voluntarily consents to the exercise of the jurisdiction of sharia courts (e.g., Sect. 5(ii)(a) & (b) Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, 1999 of Zamfara state; Ogbu 2007, 287). Customary courts apply native law and custom as far as they are not repugnant to natural justice, equity, and good conscience; they exercise jurisdiction in both criminal and civil matters. In the latter case, their jurisdiction encompasses questions of personal status such as matrimonial causes, guardianship and custody of children, and inheritance upon intestacy. Every state in the Federation has a magistrates' court system created by state legislation: magistrates' courts in the southern states have both civil and criminal jurisdiction, while in the north no magistrates' court can hear civil cases, which are vested in the district courts.[8] Each state high court has appeal jurisdiction over decisions taken by magistrates' and district courts (Ogbu 2007, 278–292).

Section 6 and Chapter VII of the Constitution provide for the creation – in Abuja and in any state – of a sharia court of appeal and a customary court of appeal that exercise appellate and supervisory jurisdiction in Islamic and customary law over the decisions of area/sharia courts and customary courts. The Sharia Court of Appeal shall be competent to decide upon:

> "(a) any question of Islamic personal law regarding a marriage concluded in accordance with Islamic law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant; (b) where all the parties to the proceeding are Muslims, any question of Islamic personal law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a foundling or the guardianship of an infant; (c) any question of Islamic personal law regarding a waqf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim; (d) any question of Islamic personal law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or (e) where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question"; Section 262 (for FCT Abuja) and 277 (for a State) Const.

8 Created pursuant to Section 6(4)(a) of the Constitution, magistrates' and district courts are inferior courts of record whose jurisdiction is limited as to the nature and value of the subject matter.

The jurisdiction of the customary court of appeal (in Abuja or in a state) is slightly different since it has appellate and supervisory jurisdiction in "civil proceedings involving questions of customary law" (Sect. 267 Const.) and, in a state, it can also "exercise such jurisdiction and decide such questions as may be prescribed by the House of Assembly of the state for which it is established" (Sect. 282 Const.).

Even if the Constitution affirms that any state can have both a sharia court of appeal and a customary court of appeal, in fact only FCT Abuja has both sharia and customary courts of appeal, while states in the north have only a sharia court of appeal, and states in the south have only a customary court of appeal. This situation causes some concerns that are addressed below.

At the federal level, apart from the Federal High Court whose exclusive jurisdiction is determined by Section 251 of the Constitution, we find the Court of Appeal. It is a single constitutional body that consists of a president and not fewer than 49 Justices of which at least three shall be learned in Islamic personal law, and at least three shall be learned in customary law (Sect. 237 Const.). Its central office is in the capital Abuja but it also has judicial divisions in the states. The Court of Appeal is an intermediate court between the high courts and the Supreme Court; its jurisdiction is statutorily defined by Section 239 and 240 of the Constitution and it can hear appeals from the Federal High Court, the high courts of the states and of the Federal Capital Territory Abuja, the sharia court of appeal of the states and of the Federal Capital Territory Abuja, and the customary court of appeal of a state (Sect. 240 Const.).

At the top of the judicial system is the Supreme Court whose jurisdiction is determined by Sections 232–233 of the Constitution. It can hear appeals against court of appeal decisions where the grounds for appeal involve questions of law alone and against decisions in any civil or criminal proceedings on questions relating to the interpretation or application of the Constitution.

Conclusion

Legal pluralism in Nigeria raises problems that still lack an unambiguous solution. One of these is the legal qualification of Islamic law in the southern states. In the famous case of *Asiata v. Goncallo* (1900) NLR 41 that took place in pre-independence southwest Nigeria, Islamic law was judicially confirmed and applied (Olatoye and Yekini 2019, 126). On the contrary in later cases, judges, while recognizing the Islamic identity of the party and the existence of Islamic law, chose to apply a native law and custom (*Tapa v. Kuka* (1945) 18 NLR 5) or English law (*Apatira v. Akanke* (1944) 17 NLR 149; *The estate of Aminatu Alayo, (Deceased) Administrator-General v. T.A. Tunwase and Others* (1946) 18 NLR 88).

In post-independence Nigeria, the status of Islamic law in the south has been addressed by the Supreme Court in two different cases. In *Adesubokan*

v. Yunusa ((1971) LPELR-154(SC)) the court decided on the basis of the principle of territorial law and not of personal law. The deceased whose will was contested was a Muslim coming from the northern region but domiciled in Lagos. For the Supreme Court, he was subject to Islamic law but any provision of that law that hinders the testamentary capacity had to be considered null and void as incompatible with the Wills Act. The court also affirmed that "there is no provision, to our knowledge, of any law which makes Muslim law, whether of the Maliki sect or any other sect, enforceable, either on its own, as such, or as part of any customary law, in any of the courts of the southern states." On the contrary, in *Zaidan v. Mohssen* ((1973) LPELR-3542 (SC)) the Supreme Court had to decide which Nigerian law was applicable to the immovable property located in Nigeria of a Lebanese Jafari Muslim deceased in Lagos. The court held that since all the parties were Muslims, the "(Muslim) customary law of Lebanon which is the one binding between the parties" was applicable. Since the parties were not Nigerian, the Supreme Court said that a customary law is any law other than the common law and the statutory law; therefore, Islamic law was treated as part of customary law and considered applicable to the case because there was no doubt that the intestate was a Lebanese ruled by Islamic law. In this case, the principle of personal law prevailed over that of territoriality.

In the following years, both the 1979 and 1999 Constitutions expressly recognized Islamic personal status law and allowed those states that so desired to establish sharia courts with jurisdiction over Islamic personal status. Nonetheless, since none of the southern states has established a sharia court, the issue of the legal qualification of Islamic law as part of customary law remains. In *Giwa-Osagie v. Giwa-Osagie & Anor* ((2009) LPELR-4533 (CA)), the Court of Appeal was asked to determine whether the substance of the case was a *waqf* governed by Islamic law or an *igiogbe* (inheritance) governed by Bini customary law. To answer, the court deemed it necessary to first verify if, in his lifetime, the deceased had changed his personal law to Islam such that his estate should be subjected to Islamic law:

> since Nigeria is a secular country, Islam is applicable only as personal law. The courts have always held that Islamic law would only apply if the parties regarded themselves as subject to it and acted accordingly . . . the point here is not whether Islamic law is part of customary law (which it is not) but if the party has lived his life in a manner consistent with the precept of Islam because it is on this base that the religious law will (or will not) be applied to the case.

Once the idea that Islamic law is not part of customary law has been accepted, a different problem arises: which is the competent authority to apply it in states where no sharia court exists? Nigerian lower courts have held – since the Supreme Court decision in *Babale v. Abdulkadir* ((1993) LPELR-693

(SC))[9] – that non-Islamic courts cannot exercise jurisdiction over Islamic personal status law disputes. Therefore, in states where no sharia courts exist, the parties must refer to an Islamic private dispute resolution panel, whose decisions are binding only on those who submit to its proceedings (Olatoye and Yekini 2019, 134). To the best of my knowledge, the Supreme Court has not yet changed its interpretation in order to allow the residual jurisdiction of a state high court over Islamic personal law disputes.

In a similar way, in those states of the north that have refused to establish customary courts and a customary court of appeal, the question is whether the state high court can be an appropriate court for customary law. In *Yange v. Musa* ((2018) LPELR-45269 (CA)), the Court of Appeal's answer was "no": "if a court has no jurisdiction in any matter, it cannot exercise judicial power to adjudicate." Therefore, what shall non-Muslim litigants in northern states do? Yekini proposes three different solutions to this problem: first, a state should set up customary courts for non-Muslims and a customary court of appeal; if this is not possible, the area/sharia court law must be amended to enable the court to exercise mandatory jurisdiction over non-Muslim personal status law with an adequate guarantee for the application of customary law where non-Muslims are involved. Finally, if even this is not feasible, *Yange v. Musa* must be overruled and, on the grounds of *forum necessitatis*, admit that the high court can exercise jurisdiction under Section 277 of the 1999 Constitution. In the meantime, the jurisdictional conundrum remains (Yekini 2020).

Finally, Christians denounce similar problems of jurisdiction (Ezeanokwasa 2019; Oraegbunam and Enemali 2021). While the status of Christian law in Nigeria is not clear (see section "Personal Status Laws") and first-degree ecclesiastical courts do not exist in the states' judicial structure, Christians focus on the constitutionally unequal treatment of their community. In fact, as we have seen in section "Judicial System," the Nigerian constitution officially recognizes only customary and Islamic law and is silent on Christian law. Nor does it provide for an ecclesiastical court of appeal; in 2021 a bill was presented to amend the Constitution in order to create, in the Federal territory of Abuja and in any interested state, an ecclesiastical tribunal on the model of the sharia court of appeal, vested with appellate and supervisory jurisdiction in civil proceedings involving questions of ecclesiastical law and Christian personal status law. The court would have been competent to decide – among others – any question regarding a marriage concluded in accordance with that law, including the validity or dissolution of such a marriage, the guardianship of an infant, or any question of Christian personal status law regarding a will or succession

9 The Supreme Court held that in a case of inheritance under Islamic Law, the high court does not have jurisdiction since it is a matter within the exclusive jurisdiction of the sharia court of appeal by virtue of the provisions of Sect. 242(1) (c) of the 1979 Constitution, which determined the jurisdiction of the sharia court of appeal of a state (corresponding to current Sect. 275 of the 1999 Const.).

where the endower, donor, testator, or deceased person was a Christian (interesting provision, since canon law does not regulate inheritance). The Justice (called Cardinal) would have been competent in ecclesiastical and Christian law. As of December 2025, the bill had not been converted into an act and the Constitution had not yet been amended.

Bibliography

Blench, Roger. 2020. *An Atlas of Nigerian Languages*. https://rogerblench.info/Language/Africa/Nigeria/Atlas%20of%20Nigerian%20Languages%202020.pdf.

Chinwuba, Nwudego Nkemakonam. 2022. *Family and Succession Law in Nigeria*. Alphen aan den Rijn: Wolters Kluwer.

Chukwu, Christian Emeka. 2021."National Integration and Peaceful Co-Existence in Nigeria: The Role of Inter-Ethnic/Inter-Religious Marriages." *Journal of Religion and Human Relations* 13(1): 250–266.

Cilardo, Agostino. 1993. *Diritto ereditario islamico delle scuole giuridiche ismailita e imamita. Casistica*. Rome-Naples: Istituto per l'Oriente – Istituto Universitario Orientale.

Cilardo, Agostino. 1994. *Diritto ereditario islamico delle scuole giuridiche sunnite (hanafita, malikita, shafi'ita e hanbalita) e delle scuole giuridiche zaydita, zahirita e ibadita. Casistica*. Rome-Naples: Istituto per l'Oriente – Istituto Universitario Orientale.

Diala, Anthony. 2014. "Reform of the Customary Law of Inheritance in Nigeria: Lessons from South Africa." *African Human Rights Law Journal* 14(2): 633–654.

Ezeanokwasa, Jude O. 2019. "Constitutional Discriminations against Christian Marriage in Nigeria: A Call for Redress." *International Journal of Comparative Law and Legal Philosophy (IJOCLLEP)* 1(1): 119–129.

Goodluck, Layefa, and Ezenagu Ngozi. 2023. "Inter-Faith Marriages: Engaging Nigerian Religious Identity in the Film *North East*." *Pharos Journal of Theology* 104(2): 1–14.

Iman, Ibrahim. 2016. "Shariah and Human Rights Perspectives on Interfaith Marriages: Challenges Impending its Practice in Nigeria." *Islamic and Civilisational Renewal* 7(4): 492–508.

Ismael, Ismael Saka, and Abdulmumini Adebayo Oba. 2017. "Legal Challenges Concerning Some Beneficiaries of Estates Governed by Islamic Law in Nigeria." *IIUM Law Journal* 25(1): 63–92.

Ismael, Ismael Saka, and Abdulmumini Adebayo Oba. 2019. "Judicial Practice in Distribution of Inheritance (*Mirath*) in Islamic Courts in Nigeria." *De Jure: Jurnal Hukum dan Syari'ah* 11(1): 1–22.

Lapidus, Ira. 2000. *Storia delle società islamiche, Vol. II. La diffusione dell'islam*. Turin: Einaudi.

Lawan, Mamman. 2014. "Law and Legal Hybridity in Nigeria." *Journal of African Law* 58(2): 303–327.

Mustapha, Abdul Raufu, and Mukhtar U. Bunza. 2017. "Islamic Sects & Groups in Northern Nigeria." In *Sects & Social Disorder. Muslim Identities and Conflict in Northern Nigeria*, edited by Abdul Raufu Mustapha, 54–97. Rochester, NY: Boydell and Brewer.

Nolte, Insa. 2020. " 'At Least I Am Married': Muslim-Christian Marriage and Gender in Southwest Nigeria." *Social Anthropology/Anthropologie Sociale* 28(2): 434–450.

Nolte, Insa, Clyde Acarno, and Rebecca Jones. 2018. "Inter-Religious Relations in Yorubaland, Nigeria: Corpus Methods and Anthropological Survey Data." *Corpora* 13(1): 27–64.

Nwauche, Enyinna S. 2008. “Law, Religion and Human Rights in Nigeria.” *African Human Rights Law Journal* 8: 568–595.

Nweke, Innocent. 2019. “Religious Pluralism and Its Effects on National Integration: The Nigerian Experience.” *International Journal of Management, Social Sciences, Peace and Conflict Studies (IJMSSPCS)* 2(3): 115–120.

Oba, Abdulmumini Adebayo. 2004a. “The Sharia Court of Appeal in Northern Nigeria: The Continuing Crises of Jurisdiction.” *The American Journal of Comparative Law* 52(4): 859–900.

Oba, Abdulmumini Adebayo. 2004b. “Lawyers, Legal Education and the Shari’ah Courts in Nigeria.” *Journal of Legal Pluralism* 49: 113–161.

Oba, Abdulmumini Adebayo, and Ismael Saka Ismael. 2020. “Revisiting the Causes of Delay in the Adjudication of Islamic Personal Law Cases in Nigerian Jurisprudence.” *Nnamdi Azikiwe University Journal of International Law and Jurisprudence (NAUJILJ)* 11(1): 1–14.

Obilade, A. O. 1969. “Reform of Customary Court Systems in Nigeria under the Military Government.” *Journal of African Law* 13(1): 28–44.

Ogbu, Osita Nnamani. 2007. *Modern Nigerian Legal System*. Uwani, Enugu: CIDJAP Press.

Olatoye, Kareem, and Yekini Abubakri. 2019. “Islamic Law in Southern Nigerian Courts: Constitutional and Conflict of Laws Perspectives.” *Benin Journal of Public Law* 6: 120–145.

Omidire, Kolapo. 1990. “Change of Personal Law under Customary Law in Nigeria.” *The International and Comparative Law Quarterly* 39(3): 671–675.

Oraegbunam, Ikenga K. E. 2015. “Islamic Criminal Law and Constitutionalism in Nigeria: Any Lessons from Turkey?” *Journal of Law, Policy and Globalization* 33: 25–45.

Oraegbunam, Ikenga K. E., and Aloysius Enemali. 2021. “Canon Law and the Nigerian Legal System.” *African Customary and Religious Law Review (ACARELAR)* 2: 10–18.

Peters, Rudolph. 2003. *Islamic Criminal Law in Nigeria*. Nigeria: Spectrum Books.

Peters, Rudolph. 2005. *Crime and Punishment in Islamic Law*. Cambridge: Cambridge University Press.

Peters, Rudolph. 2006. “The Re-Islamization of Criminal Law in Northern Nigeria and the Judiciary: The Safiyyatu Hussaini Case.” In *Dispensing Justice in Islam. Qadis and their Judgement*, edited by Muhammad Khalid Masud, Rudolph Peters, and David S. Powers, 219–241. Leiden-Boston: Brill.

Siollun, Max, and Robert E. Looney. 2021. “Nigeria.” In *Europa Publications. Africa South of the Sahara*. London: Routledge.

Udugbor, Marcellus Okenwa. 2012. *Introduzione all’istituzione del diritto africano dalla consuetudine alle influenze coloniali-religiose*. Vatican City: Lateran University Press.

Unobe, Ejembi Anefu. 1989. “Class-Formation, State Construction and Customary Law in Colonial Nigeria, Africa Development.” *Afrique et Développement* 14(4): 95–111.

Yekini, Abubakri. 2020. “Jurisdiction Over Non-Muslim Personal Law Disputes in Northern Nigeria: Can the State High Court be a Forum Necessitatis?” *Elizade University Law Journal*: 1–14.

List of Cases Cited

Adesubokan v. Yunusa (1971) LPELR-154(SC).
Agbakoba v. A-G, Federation & Anor (2021) LPELR-55906 (CA).
Alkamawa v. Bello & Anor (1998) LPELR-424 (SC).

Apatira v. Akanke (1944) 17 NLR 149.
Asiata v. Goncallo (1900) NLR 41.
Babale v. Abdulkadir (1993) LPELR-693(SC).
Balanko &Ors v. Balanko (2021) LPELR-53459 (CA).
Chiduluo & Ors v. Attansey & Anor (2019) LPELR-48243 (CA).
Cole v. Cole (1898) NLR 15.
The Estate of Aminatu Alayo, (Deceased) Administrator-General v. T.A. Tunwase and Others (1946) 18 NLR 88.
Giwa-Osagie v. Giwa-Osagie & Anor (2009) LPELR-4533(CA).
Mariyama v. Sadiku Ejo (1961) NRNLR 81.
Motoh v. Motoh (2010) LPELR-8643 (CA).
Nebuwa v. Nnenna (2018) LPELR 45097 (CA).
Nwaigwe & Ors v. Okere & Anor (2008) LPELR-2095 (SC).
Oduche v. Oduche (2005) LPELR-5976 (CA).
Olowu & Ors v. Olowu & Anor (1985) LPELR-2604 (SC).
Onyibor Anekwe & Anor v. Mrs Maria Nweke (2014) LPELR-22697 (SC).
Tapa v. Kuka (1945) 18 NLR 5.
Ugbene v. Ugbene & Ors (2016) LPELR-42110 (CA).
Ukeje &Anor v. Ukeje (2014) LPELR-22724 (SC).
Yanhe v. Musa (2018) LPELR-45269 (CA).
Zaidan v. Mohssen (1973) LPELR-3542 (SC).